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Supreme Court of the United States

October Term, 1956

No. 629

ROSLYN GREENFIELD and JOSEPH RAE,
Petitioners,

AGAINST

L. K. LAND CORPORATION,
Respondent.

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

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Nature of Action

This is an action to foreclose certain tax liens acquired by respondent through assignment from the City of New York.

Question Presented in the State Courts

We agree with petitioner that the sole question in the State Courts was whether the action was barred by New York Civil Practice Act, Sections 47-a or 48(2) (Petition, p. 3).

State Court Decisions

Special Term (the Court of first instance), held that the defense of the Statute of Limitations was unavailable and accordingly granted judgment of foreclosure and sale (Petition, p. 27).

The Appellate Division (the intermediate appellate court) reversed but was in turn reversed by the Court of Appeals (the highest State Court), which reinstated the judgment (Petition, pp. 19-24).

Question Presented for Review

The petition presents for review the question whether the decision of the Court of Appeals operates to deny to petitioners the constitutional guarantees of the Fourteenth Amendment.

Jurisdiction

Petitioner seeks to invoke the jurisdiction of this Court under 28 U. S. C. A. 1257, subd. 3 as amended by the Act of June 25, 1948.

Respondent's Opposition

The petition is opposed on the grounds that:

(1) The petition is untimely.

(2) No Federal question was presented, passed upon or determined.

(3) Jurisdiction has not been validly invoked.

POINT I

The Petition Is Untimely

By 28 U. S. C. A. 2102, subd. C, petitioners were required to apply for the writ within ninety days after the entry of the judgment or decree sought to be reviewed.

Petitioners assert that they seek a review of the decision and order of the Court of Appeals dated July 11, 1956 (Petition, p. 2). They were therefore required to apply for a writ not later than October 9, 1956.

And if, despite the foregoing, September 5, 1956 (the date of filing of the Appellate Division order reinstating the judgment), be considered as or determined to be the controlling date, then the application should have been filed not later than December 4, 1956.

The petition herein was filed on December 13, 1956; it is therefore untimely and may not be granted.

Lastly and perhaps unnecessarily, we refer to the order denying reargument which petitioners have included as part of their appendix (p. 18). They make no express claim that the date of this order—October 18, 1956—is or should be the controlling date, but its inclusion may perhaps be construed as a suggestion by petitioners that their time to apply for the writ commenced on October 18, 1956.

This suggestion—if such it be—is without merit because:

(1) Such order did not decide anything not theretofore determined and therefore (for the purpose of a petition for certiorari), the judgment or decree was final by July 11, 1956.

In support, reference is respectfully made to *Market Street Railway Company* v. *Railroad Commission* (324 U. S. 548) in which this Court held that its

> "jurisdiction to review a state court judgment is confined by long standing statute to one which is final. Judicial Code Sec. 237, 28 U. S. C. A. 344, 8 FCA title 28, Sec. 244. Final it must be in two senses: It must be subject to no further review or correction in any other state tribunal; it must also be final as an effective determination of the litigation and not of merely interlocutory or intermediate steps herein. It must be the final word of a final court, * * * Such finality is not deferred by the existence of a latent power in the rendering court to reopen or revise its judgment."

The judgment here became final in both senses on July 11, 1956.

(2) An order denying reargument is not appealable and does not extend appellant's time in any case where such time is limited. (*Ecco* v. *Amtorg*, 276 A. D. 1080; *Sherman* v. *P & Q*, 277 A. D. 782). Appellants may not unilaterally and without authority extend their time to petition for a writ by the device of a motion for reargument.

(3) The order denying reargument (Appendix, p. 18) did not specify the grounds therefor. Necessarily, however, the decision must have rested upon a non federal ground since no federal question was raised prior to reargument (Petition, pp. 2 and 3).

Reargument having been denied, it logically follows that the federal question, raised for the first time on reargument, was not considered. At any rate, it does not appear that the determination of this question was necessary to the decision and therefore jurisdiction should be declined. (*Ellis* v. *Dixon*, 349 U. S. 459.)

POINT II

No Federal question was presented, passed upon or determined.

Petitioners assert and respondent agrees that the sole question in the State Courts was whether this action of foreclosure was subject to the New York Statute of Limitations (Petition, p. 3).

The Court of Appeals held that since the New York City Charter (Sec. 172) and the New York City Administrative Code (415(1)-7.0) provided that the lien of the tax persists until paid and that nothing short of payment will discharge such lien, the general limitation statutes of New York Civil Practice Acts 47a or 48(2) did not apply.

Clearly, this is not a Federal question for all that was here presented and passed upon is the construction and applicability of New York State statutes. (State Court opinions, petition appendix, pp. 19 to 27.)

No certificate was made by the State Court showing the presence of a Federal question nor does it affirmatively appear from the record that a Federal question was presented and necessarily determined. The record is therefore insufficient to warrant review and the writ should therefore be denied. (*Honeyman* v. *Hanan*, 300 U. S. 14; appeal dismissed 302 U. S. 375; *Ellis* v. *Dixon*, 349 U. S. 458.)

POINT III

Jurisdiction Has Not Been Properly Invoked

Petitioners invoke jurisdiction under 28 U. S. C. A. 1257 subd. 3, which in its pertinent part, provides

> "By writ of certiorari, where the validity of a treaty or statute of the United States is drawn in question or where the validity of a State statute is drawn in question on the ground of its being repugnant to the Constitution, treaties or laws of the United States."

At no time have petitioners claimed that any of the statutes here involved is repugnant to the Constitution, treaties or laws of the United States.

On the motion for judgment and on the successive appeals therefrom, petitioners contended that this action was subject to Secs. 47 and 48 of the Civil Practice Act. The Court of Appeals held that these sections did not apply.

Petitioners' disappointment with or objection to the construction of the Statutes involved, their interpretation and effect cannot be made the basis for review. These are purely local and non-federal questions.

In any event, the record does not disclose the statutory repugnancy referred to in Sec. 1257.

CONCLUSION

For the foregoing reasons, this petition for a writ of certiorari should be denied.

Respectfully submitted,

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